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Kacvinsky LLC c/o Intelleivate P.O. Box 52050 Minneapolis, MN 55402			GRAHAM, CLEMENT B	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/967,171	<b>Applicant(s)</b> FLUHR ET AL.
	<b>Examiner</b> CLEMENT B. GRAHAM	<b>Art Unit</b> 3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

- 1) Responsive to communication(s) filed on 11 January 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper Nut(s)/Mail Date 12/10/01, 11/26/03, 5/29/03.
- 4) Interview Summary (PTO-413)  
 Paper Nut(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. In view of the Appeal Brief filed on 01/11/08, PROSECUTION IS HEREBY REOPENED.  
New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

/Kambiz Abdi/  
Supervisory Patent Examiner, Art Unit 3692

2. Claims 1-43 remained pending in this application.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-43, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakfoor U.S. Patent 6,496,809 in view of Greasy WO 00/46728.

As per claim 1, Nakfoor discloses a system for providing logistics for a sale goods, said system being adapted to receive information from at least one remote seller and at least one remote buyer, and to provide financial logistics and shipping logistics for completing said sale of goods without requiring interaction between said buyer and said seller. (see column 2 lines 29-67 and column 3-4 lines 1-67 and column 5 lines 10-39 and 49-67 and column 6 claim 1).

Nakfoor fail to explicitly teach wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration.

However Greasy discloses after verifying and/or editing the Origin Address and Return Address, the process proceeds to step as shown in FIG. 1511 At step, the user scrolls the SHIPPING INFORMATION page 660 if necessary and selects appropriate shipping service details for the present shipment. The user determines if a correct service type is filled in at decision, and if not the routine branches to step, where the user selects the appropriate service types from a dropdown list 704 in FIG. 26. As shown in FIG. 26, some illustrative service types may include Next Day Air, Next Day Air Saver, 2d Day Air A.M., 2d Day Air, Worldwide Express Letter, and the like. After receipt of the selected service type from the user, the process branches to decision. The decision, the system tests whether the user has selected a special package shipping option, for example, Saturday delivery. If Saturday delivery is desired, the user can select a Saturday Delivery checkbox 706 (FIG. 26) at step 398.(see column 83 lines 3-19 -61 and column 38 lines 5-22 and column 32 lines 6-22).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nakfoor to include wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration in order to provide customers with the option shipping or delivery options so they may chose the option based on their shipping needs and time constraints.

As per claim 2, Nakfoor discloses wherein said system is adapted to receive said information over a communications network.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 10-39 and 49-67 and column 6 claim 1).

As per claim 3, Nakfoor discloses wherein said system is adapted to provide said shipping logistics by use of at least one geography-based and time-based strategy.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 4, Nakfoor discloses wherein said goods are time-sensitive.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 5, Nakfoor discloses wherein said goods are event tickets. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

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As per claim 6, Nakfoor discloses wherein said shipping logistics include Electronically transferring said event tickets from said seller to said buyer. (see column 6 lines 49-67 and column 7 lines1-39 and lines 59-65 and column 8 lines 5-34 and column 10 lines 30-67).

As per claim 7, Nakfoor discloses wherein said shipping logistics include arranging for a courier to receive said goods from said seller and to deliver said goods to said buyer.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 8, Nakfoor discloses wherein said system utilizes said at least one geography-based and time-based strategy to provide said seller with a latest possible time for said sale to end. (see column 6 lines 49-67 and column 7 lines1-39 and lines 59-65 and column 8 lines 5-34 and column 10 lines 30-67).

As per claim 9, Nakfoor discloses wherein said system is adapted to receive a sale price for said goods from a seller and to present said goods for sale at said sale price, said system being further adapted to selectively reduce said sale price by a predetermined amount upon expiration of a predetermined time period. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 10, Nakfoor discloses wherein said system further utilizes said at least one geography based and time-based strategy to provide said buyer with at least one option for shipping said goods with at least one courier. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 11, Nakfoor wherein said financial logistics include authorizing an amount of sale on a credit card of said buyer, charging said credit card for said amount of sale, receiving said amount of sale, and transferring at least a portion of said amount of sale to said seller. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 12, Nakfoor discloses a system for providing logistics for a sale of goods comprising:

a first portion adapted to receive information from a seller, including a location, desired sale price and description of certain goods;

a second portion adapted to present said desired sale price and description of said certain goods to a prospective buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 10-39 and 49-67) a third portion adapted to receive a purchase request and credit card information from said buyer;

a fourth portion adapted to provide financial logistics, including authorizing and charging said credit card, and providing funds to said seller; and a fifth portion adapted to provide shipping logistics, including arranging for shipping said goods from said seller to said buyer.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

Nakfoor fail to explicitly teach wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration.

However Greasy discloses after verifying and/or editing the Origin Address and Return Address, the process proceeds to step as shown in FIG. 1511 At step, the user scrolls the SHIPPING INFORMATION page 660 if necessary and selects appropriate shipping service details for the present shipment. The user determines if a correct service type is filled in at decision 392, and if not the routine branches to step 394, where the user selects the appropriate service types from a dropdown list 704 in FIG. 26. As shown in FIG. 26, some illustrative service types may include Next Day Air, Next Day Air Saver, 2d Day Air A.M., 2d Day Air, Worldwide Express Letter, and the like. After receipt of the selected service type from the user, the process branches to decision. The decision 396, the system tests whether the user has selected a special package shipping option, for example, Saturday delivery. If Saturday delivery is desired, the user can select a Saturday Delivery checkbox 706 (FIG. 26) at step 398.(see column 83 lines 3-19 -61 and column 38 lines 5-22 and column 32 lines 6-22).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nakfoor to include wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration in order to provide customers with the option shipping or delivery options so they may chose the option based on their shipping needs and time constraints.

As per claim 13, Nakfoor discloses wherein said first, second and third portions each comprise at least one interactive Web page.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 14, Nakfoor discloses wherein said first portion is adapted to determine a last sale time, based upon said location of said goods, a point of last delivery, and an expiration time of said goods.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 15, Nakfoor discloses wherein said fourth portion is further adapted to receive confirmation from a seller, and to charge said credit card only after receiving said confirmation.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 16, Nakfoor discloses wherein said fifth portion is further adapted to determine at least one shipping option based upon said point of last delivery and said expiration time of said goods. .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 17, Nakfoor discloses wherein said fifth portion is further adapted to present said at least one shipping option for selection by said buyer. .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 18, Nakfoor discloses wherein said fifth portion is integrated with at least one computer system of a shipping courier. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 19, Nakfoor discloses wherein said second portion is further adapted to selectively reduce said desired sale price by a predetermined amount upon expiration of a predetermined time period. .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 20, Nakfoor discloses wherein said second portion is further adapted to selectively vary said desired sale price based upon market conditions. (see column 6 lines 49-67 and column 7 lines1-39 and lines 59-65 and column 8 lines 5-34 and column 10 lines 30-67).

As per claim 21, Nakfoor discloses wherein said goods are time-sensitive. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 22, Nakfoor discloses wherein said goods are event tickets .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 23, Nakfoor discloses wherein said fifth portion is further adapted to electronically transfer said event tickets from said seller to said buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 24, Nakfoor discloses wherein said point of last delivery is a venue location of said event and said expiration time is a time of said event. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 25, Nakfoor discloses a method for providing logistics for a sale of goods without requiring interaction between a seller and a buyer, comprising the steps of receiving information from a seller regarding certain goods that said seller desires to sell .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 10-39 and 49-67) providing said information to at least one prospective buyer regarding said certain goods; receiving a purchase request for said certain goods from a buyer; confirming said buyer's ability to pay for said goods, arranging for said certain goods to be transferred from said seller to said buyer; receiving payment from said buyer, confirming that said certain goods have been received by said buyer; and providing at least a portion of said received payment to said seller. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

Nakfoor fail to explicitly teach wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration.

However Greasy discloses after verifying and/or editing the Origin Address and Return Address, the process proceeds to step as shown in FIG. 1511 At step, the user scrolls the SHIPPING INFORMATION page 660 if necessary and selects appropriate shipping service details for the present shipment. The user determines if a correct service type is filled in at decision 392, and if not the routine branches to step 394, where the user selects the appropriate service types from a dropdown list 704 in FIG. 26. As shown in FIG. 26, some illustrative service types may include

Next Day Air, Next Day Air Saver, 2d Day Air A.M., 2d Day Air, Worldwide Express Letter, and the like. After receipt of the selected service type from the user, the process branches to decision. The decision 396, the system tests whether the user has selected a special package shipping option, for example, Saturday delivery. If Saturday delivery is desired, the user can select a Saturday Delivery checkbox 706 (FIG. 26) at step 398.(see column 83 lines 3-19 -61 and column 38 lines 5-22 and column 32 lines 6-22).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nakfoor to include wherein said shipping logistics include automated variation of delivery options as a function of a time period associated with said goods and a geography based consideration in order to provide customers with the option shipping or delivery options so they may chose the option based on their shipping needs and time constraints.

As per claim 26, Nakfoor discloses wherein said certain goods are time-sensitive. .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 27, Nakfoor discloses wherein said certain goods are event tickets .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 28, Nakfoor discloses wherein said event tickets are electronically transferred from said buyer to said seller. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 29, Nakfoor discloses wherein said event tickets are physically transferred from said buyer to said seller. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 30, Nakfoor discloses wherein said step of confirming said buyer's ability to pay for said goods includes authorizing a credit card of said buyer .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 31, Nakfoor discloses wherein said step of receiving payment from said buyer includes charging said credit card. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

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As per claim 32, Nakfoor further comprising the step of confirming said seller's ability to provide said certain goods prior to charging said credit card. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 33, Nakfoor discloses wherein said step of providing said information to at least one prospective buyer is performed by use of a Web site. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 34, Nakfoor discloses wherein said step of arranging for said certain goods to be transferred from said seller to said buyer includes determining a plurality of shipping options by use of a geography and time-based strategy, and providing said plurality of shipping options to said buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 35, Nakfoor discloses wherein each of said steps is performed without disclosing the identities of said buyer and said seller to one another. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 36 Nakfoor discloses a method of providing logistics for a sale of event tickets, comprising the steps of providing a Web site for receiving information from and presenting information to prospective sellers and buyers of event tickets;

receiving information from a seller, including attributes of at least one event ticket that said seller desires to sell, and a location of said at least one event ticket.(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-60)

determining a last sale time based upon said location of said at least one event ticket, a point of last delivery, and a time when said associated event will occur .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 10-39 and 49-67) presenting said at least one event ticket for sale to prospective buyers by use of said Web site, until said at least one event ticket is sold or said last sale time passes, receiving a purchase request for said at least one event ticket from a buyer, providing at least one shipping option for selection by said buyer, and receiving an associated selected shipping option from said buyer querying said buyer for information regarding a credit card to pay for said at least one event ticket authorizing the credit card of said buyer for an amount of sale .(see column 2 lines 29-67 and column 3-4 lines1-67 and

column 5 lines 22-39 and 49-67) arranging for a courier to receive said at least one event ticket from said seller and deliver said at least one event ticket to said buyer, according to said selected shipping option, charging said credit card of said buyer for said amount of sale;

receiving said amount of sale .(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67) and providing at least a portion of said amount of sale to said seller upon delivery of said at least one event ticket to said buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 37 Nakfoor discloses further comprising the steps of:

receiving confirmation that said seller can provide said at least one event ticket prior to charging said credit card of said buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 38 Nakfoor discloses wherein said point of last delivery is determined to be the venue location of said event (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 39, Nakfoor discloses wherein said location of said at least one event ticket is determined to be the location of said seller. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 40, Nakfoor discloses a method of providing logistics for a sale of event tickets comprising the steps of:

proving a Web site for receiving information from and presenting information to prospective sellers and buyers of event tickets (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67)

providing a seller an option for selling event tickets within a season ticket package;

providing an interactive page on said Web site which automatically displays all events remaining in said season ticket package to said seller(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67)

allowing said seller to select any of said displayed events to place for sale, to enter sales information including a number of tickets for sale for each event, and a price per ticket for each event; and presenting said sales information to prospective buyers by use of said Web site(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67)

receiving information from a seller, including attributes of at least one event ticket that said seller desires to sell, and a location of said at least one event ticket(see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 22-39 and 49-67)

determining a last sale time based upon said location of said at least one event ticket, a point of last delivery, and a time when said associated event will occur;

presenting said at least one event for sale to prospective buyers by use of said Web site, until said at least one event ticket is sold or said last sale time passes;

receiving a purchase request for said at least one event ticket from a buyer. (see column 2 lines 29-67 and column 3-4 lines1-67 and column 5 lines 10-39 and 49-67 and column 6 claim 1).

Nakfoor fail to explicitly teach providing at least one shipping option for selection by said buyer, and receiving an associated selected shipping option from said buyer; and providing one or both of financial logistics and/or shipping logistics to a prospective, buyer.

However Greasy discloses after verifying and/or editing the Origin Address and Return Address, the process proceeds to step as shown in FIG. 1511 At step, the user scrolls the SHIPPING INFORMATION page 660 if necessary and selects appropriate shipping service details for the present shipment. The user determines if a correct service type is filled in at decision 392, and if not the routine branches to step 394, where the user selects the appropriate service types from a dropdown list 704 in FIG. 26. As shown in FIG. 26, some illustrative service types may include Next Day Air, Next Day Air Saver, 2d Day Air A.M., 2d Day Air, Worldwide Express Letter, and the like. After receipt of the selected service type from the user, the process branches to decision. The decision 396, the system tests whether the user has selected a special package shipping option, for example, Saturday delivery. If Saturday delivery is desired, the user can select a Saturday Delivery checkbox 706 (FIG. 26) at step 398.(see column 83 lines 3-19 -61 and column 38 lines 5-22 and column 32 lines 6-22).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nakfoor to include providing at least one shipping option for selection by said buyer, and receiving an associated selected shipping option from said buyer; and providing one or both of financial logistics and/or shipping logistics to a prospective, buyer in order to provide customers with the option shipping or delivery options so they may chose the option based on their shipping needs and time constraints.

As per claim 41 Nakfoor discloses further comprising the steps of receiving a minimum sale price for said at least one event ticket from said seller; and

receiving a desired sale price for said at least one event ticket from said seller;

displaying a purchase price for said at least one event ticket to prospective buyers, said purchase price being initially equal to said desired sales sale price; and

selectively reducing said displayed purchase price by a predetermined amount each time a predetermined time period expires until said at least one event ticket is sold or until said purchase price equals said minimum sale price (see column 2 lines 29-67 and column 3-4 lines 1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 42 Nakfoor discloses further comprising the steps of;

receiving a desired sale price for said at least one event ticket from said seller; and displaying a purchase price for said at least one event ticket to prospective buyers, said purchase price being initially equal to said desired sale price; and selectively varying said displayed purchase price based upon market conditions. (see column 2 lines 29-67 and column 3-4 lines 1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

As per claim 43 Nakfoor discloses further comprising the steps of determining a time remaining before said event tickets expire upon receiving said purchase request from said buyer, and determining said at least one shipping option based upon said time remaining before said event, and said location of said at least one event ticket. (see column 2 lines 29-67 and column 3-4 lines 1-67 and column 5 lines 22-39 and 49-67 and column 6 claim 1).

### **Conclusion**

### **RESPONSE TO ARGUMENTS**

5. Applicant's arguments foiled 10/22/07 has been fully considered but they are moot in view of new grounds of rejections.

6. Applicant's claims 1, 9, 12, 25, 36, 40, uses the phrases "adapted to sell", "wherein" and "when". However the subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not positively require steps to be

performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

\*\*>USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550- 551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.”).<

Where an explicit definition is provided by the applicant for a term that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a “lexicographic vacuum, but in the context of the specification and drawings.”). Any special meaning assigned to a term “must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.” Multiform Desiccants Inc. v. Medzam Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

7 Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLEMENT B. GRAHAM whose telephone number is (571)272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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